TRANSCRIPT

OF

RECORD

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907

No. 69.

FRANCIS WINSLOW, AUGUSTUS JAY, AND AMERICAN SECURITY AND TRUST COMPANY, TRUSTEES, AND KATE LA MONTAGNE, HARRIET WINSLOW, AND ELIZABETH P. PATTERSON, PLAINTIFFS IN ERROR,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY, A CORPORATION.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

(20,298.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 333.

FRANCIS WINSLOW, AUGUSTUS JAY, AND AMERICAN SECURITY AND TRUST COMPANY, TRUSTEES, AND KATE LA MONTAGNE, HARRIET WINSLOW, AND ELIZABETH P. PATTERSON, PLAINTIFFS IN ERROR,

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In the Court of Appeals of the District of Columbia

FRANCIS WINSLOW ET AL., Appellants,
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY, a Corporation.
No. 1570.

a Supreme Court of the District of Columbia.

In the Matter of the Condemnation by THE BALTIMORE AND OHIO RAILROAD COMPANY of part of a tract of land located in the county of Washington, District of Columbia, and formerly known as "Youngsborough," described as follows: Beginning at the northeast corner of Florida avenue and Brentwood road, thence in a northeasterly direction along the easterly side of said Brentwood road 93 feet, more or less, to an angle in the easterly line of said road; thence northeasterly along said east line to a point 80 feet distant, measured on a radial line from the centre line between the Pennsylvania and Baltimore and Ohio main tracks, as they will be constructed across said Brentwood road, said centre line being the 3 degree curve shown in red on blue print hereto attached; thence southerly on a line parallel and 80 feet distant from the said above mentioned centre line, a distance of 244 feet, more or less, to the north line of said Florida avenue; thence in a northwesterly direction along the northerly line of said Florida avenue, a distance of 103 feet, more or less, to place of beginning. The above described tract to be used for right of way purposes. Also a strip of ground 50 feet wide east of and immediately adjoining the parcel above described, and extending from the easterly line of said Brentwood road to the northerly line of Florida avenue. The last mentioned parcel to be used for relocating and changing of said Brentwood road. District court, No. 626.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss*:

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Instrument of Appropriation.*

Filed August 22, 1904.

In the Supreme Court of the District of Columbia, Holding a District Court of the United States.

In the Matter of the Condemnation by THE BALTIMORE AND OHIO RAILROAD COMPANY of part of a tract of land located in the county of Washington, District of Columbia, and formerly known as "Youngsborough," described as follows: Beginning at the northeast corner of Florida avenue and Brentwood road, thence in a northeasterly direction along the easterly side of said Brentwood road 93 feet, more or less, to an angle in the easterly line of said road; thence northeasterly along said east line to a point 80 feet distant, measured on a radial line from the centre line between the Pennsylvania and Baltimore and Ohio main tracks, as they will be constructed across said Brentwood road, said centre line being the 3 degree curve shown in red on blue print hereto attached; thence southerly on a line parallel and 80 feet distant from the said above mentioned centre line, a distance of 244 feet, more or less, to the north line of said Florida avenue; thence in a northwesterly direction along the northerly line of said Florida avenue, a distance of 103 feet, more or less, to place of beginning. The above described tract to be used for right of way purposes. Also a strip of ground 50 feet wide east of and immediately adjoining the parcel above described, and extending from the easterly line of said Brentwood road to the northerly line of Florida avenue. The last mentioned parcel to be used for relocating and changing of said Brentwood road. District docket, No. 626.

The Baltimore and Ohio Railroad Company, a body corporate, duly incorporated under act of assembly of Maryland of February 28, 1827, and authorized by act of Congress of March 2, 1831, and by subsequent acts to extend, construct and use its lines within the District of Columbia and the city of Washington, being de-
2 sirous of acquiring in fee simple, in accordance with the provisions of the act of Congress approved February 28, 1903, and the other acts of Congress therein referred to, for the purposes of providing facilities for passengers and freight traffic, right-of-way and approaches to freight and passenger terminals, the part of the tract of land located in the county of Washington, District of Columbia, and formerly known as "Youngsborough," described as follows: Beginning at the northeast corner of Florida avenue and Brentwood road, thence in a northeasterly direction along the easterly side of said Brentwood road, ninety-three (93) feet, more or less to an angle in the easterly line of said road; thence northeasterly along said east line to a point eighty (80) feet distant measured

on a radial line from the centre line between the Pennsylvania and Baltimore and Ohio main tracks, as they will be constructed across said Brentwood road, said centre line being the three (3) degree curve shown in red on blue print hereto attached; thence southerly on a line parallel and eighty (80) feet distant from the said above mentioned centre line, a distance of two hundred and forty-four (244) feet, more or less, to the north line of said Florida avenue; thence in a northwesterly direction along the northerly line of said Florida avenue a distance of one hundred and three (103) feet, more or less, to place of beginning. The above described tract to be used for right of way purposes.

Also a strip of ground fifty (50) feet wide east of and immediately adjoining the parcel above described, and extending from the easterly line of said Brentwood road to the northerly line of
3 Florida avenue. The last mentioned parcel to be used for relocating and changing of said Brentwood road; said relocation and change of said road on and over the fifty foot strip herein described being desired and necessary because of the impracticability of carrying said road over or under the tracks of the said company crossing said road north of Florida avenue.

The condemnation of all of said described property is necessary to enable the Baltimore and Ohio Railroad Company to carry into effect the purposes of said act of Congress of February 28, 1903, in the construction of passenger and freight terminals and the necessary tracks and approaches thereto.

Now, in pursuance of the provisions of said act of Congress of February 28, 1903, and of the other acts of Congress therein referred to, the said Baltimore and Ohio Railroad company, a corporation as aforesaid, deposits this instrument of appropriation and description of said land and premises, rights and interests, intended to be appropriated and acquired, with the clerk of this court.

That the said piece or parcel of land, which is unimproved, is now held and owned by Francis Winslow, Augustus Jay and the American Security and Trust Company, substituted trustees, under the will of Catharine Pearson, deceased, who hold the same for the use and benefit of Kate La Montague, Harriet Winslow and Elizabeth P. Patterson, under said will, and under a deed from said Kate La Montague, Harriet Winslow and Elizabeth P. Patterson, dated November 19, 1902, and recorded December 2, 1902, in Liber 2676, folio 465, of the land records of the District of Columbia, and said property is unencumbered.

4 That the Baltimore and Ohio Railroad Company has endeavored to contract with the above named owners for the purchase, use and occupation of said lands held by them as aforesaid, for the purposes aforesaid, but has not been able to come to an agreement with the said named parties, or any of them. Said company is, therefore, advised that by virtue of the provisions of said act of Congress of February 28, 1903, and the other acts therein referred to, it is authorized to institute proceedings for the condem-

nation of the hereinbefore described lands required for the purposes aforesaid, for which said parcel of land and premises your petitioner tenders itself ready and willing to pay just compensation to be ascertained in these proceedings, which are in accordance with the provisions of the act of Congress quoted.

That the owners and holders of the legal title of said property, as appears from the land records of the District of Columbia, are Francis Winslow, Augustus Jay and the American Security and Trust Company, trustees, and that the beneficial owners of said described property are Kate La Montague, Harriet Winslow and Elizabeth P. Patterson.

Wherefore, and to the end that the Baltimore and Ohio Railroad Company may acquire and hold all of the pieces or parcels of land described herein for the purposes indicated, it prays

First. That the said land and property described in this instrument of appropriation may be condemned for the purposes of providing terminal facilities for the passenger and freight traffic, right of way and approaches to freight and passenger terminals of the Baltimore and Ohio Railroad Company, and fee simple title thereto be vested in said company.

5 Second. That this court will direct the United States marshal for the District of Columbia to serve a copy of this instrument of appropriation upon the several owners, legal and beneficial, of said land, and to forthwith make a return of said service to this court, and to attach or affix a copy of said instrument of appropriation to and upon said described land and premises, according to the rule of this court in such cases made and provided, unless all of said parties shall enter their appearance herein.

Third. That this court will, upon proper proof of service of this instrument of appropriation, as herein prayed, appoint three disinterested, competent and discreet freeholders of the District of Columbia, none of whom shall be interested in said land, or a stockholder in, or employed by, or connected with said company, to appraise the damages which the owners of said land may sustain by reason of such appropriation, and to make return thereof to this court, as by law provided.

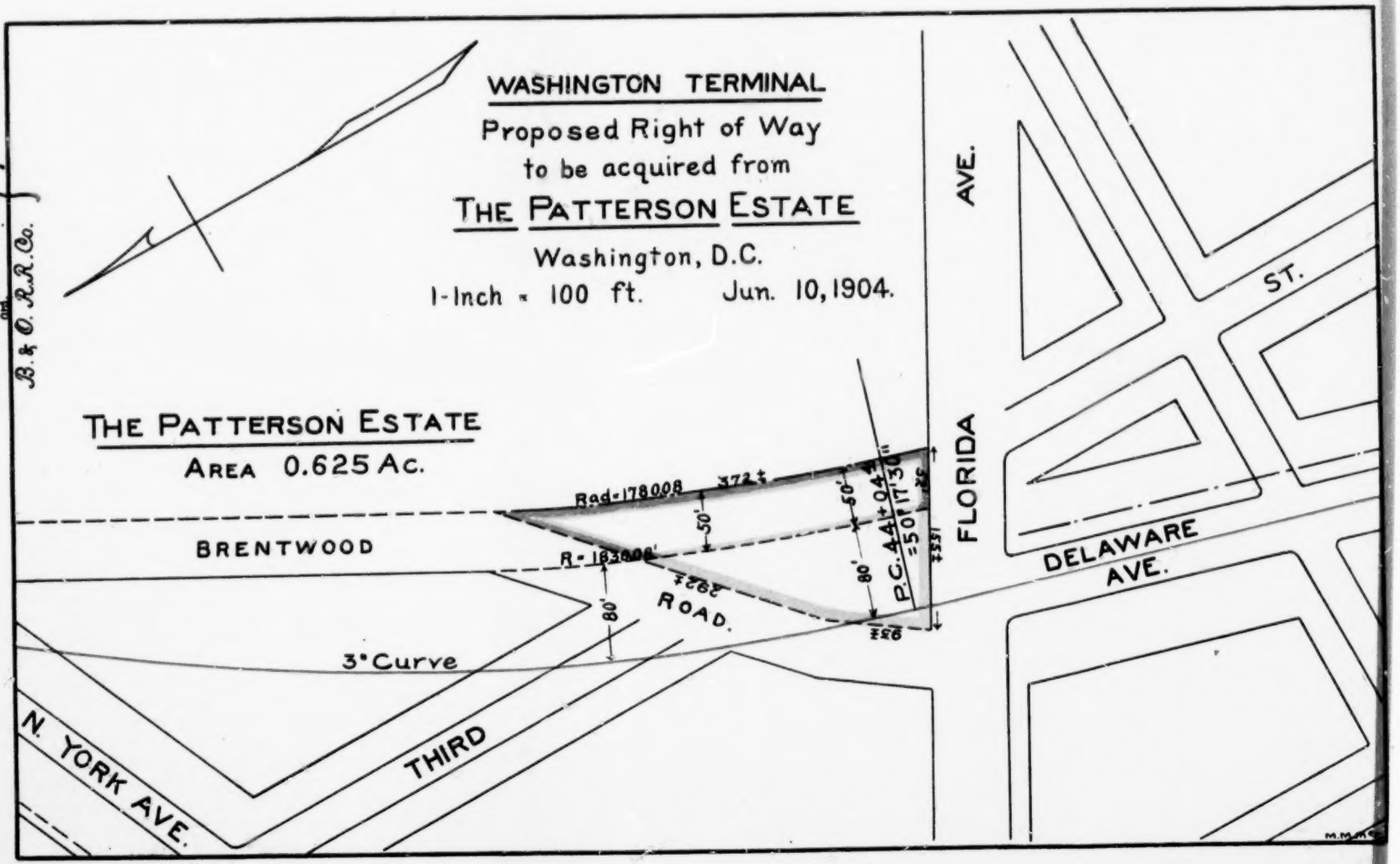
And for such other and further relief as to the court may seem meet, the nature of the case may require, and as the aforesaid act of Congress provides for and directs.

BALTIMORE & OHIO RAILROAD CO.,
By J. F. LEGGE, *Agent.*

GEORGE E. HAMILTON,
Att'y for Petitioner.

I, J. F. Legge, terminal agent, of the Baltimore and Ohio Railroad Company, do solemnly swear that I have read the fore-
6 going instrument of appropriation filed by the Baltimore and Ohio Railroad Company, and know the contents thereof; that

"B" No. 1570. F. Winslow et al vs. B. & O. R.R. Co. } Pr. 7.



the matters therein stated upon knowledge are true, and those stated upon information and belief, I believe to be true.

J. F. LEGGE.

Subscribed and sworn to before me this 22" day of August, A. D. 1904.

WALTER F. DONALDSON,
Notary Public, D. C.

[SEAL.]

(Here follows diagram, Plan B, marked p. 7.)

8 *Order.*

Filed September 1, 1904.

In the Supreme Court of the District of Columbia, Holding a District Court of the United States.

In the Matter of the Condemnation by THE BALTIMORE AND OHIO RAILROAD COMPANY of part of a tract of land located in the county of Washington, District of Columbia, and formerly known as "Youngsborough," described as follows: Beginning at the northeast corner of Florida avenue and Brentwood road, thence in a northeasterly direction along the easterly side of said Brentwood road 93 feet, more or less, to an angle in the easterly line of said road; thence northeasterly along said east line to a point 80 feet distant, measured on a radial line from the centre line between the Pennsylvania and Baltimore and Ohio main tracks as they will be constructed across said Brentwood road, said centre line being the 3 degree curve shown in red on blue print hereto attached; thence southerly on a line parallel and 80 feet distant from the said above mentioned centre line a distance of 244 feet, more or less, to the north line of said Florida avenue; thence in a northwesterly direction along the northerly line of said Florida avenue a distance of 103 feet, more or less, to place of beginning. The above described tract to be used for right-of-way purposes. Also a strip of ground 50 feet wide east of and immediately adjoining the parcel above described, and extending from the easterly line of said Brentwood road to the northerly line of Florida avenue. The last mentioned parcel to be used for relocating and changing of said Brentwood road. District docket, No. 626.

Upon consideration of the instrument of appropriation of the above named corporation, the Baltimore and Ohio Railroad Com-

pany, it is by the court this 1st day of September, A. D, 1904, adjudged and ordered that said petition be filed.

9 And it is further ordered that said owners, trustees and beneficial owners, and all other persons having any right, title or interest in said described property, be, and they are hereby required to appear in this court on or before the 10th day of September, A. D. 1904, and show cause, if any, they, or any of them, have, why the prayers of the petition in this cause should not be granted, and why this court should not then proceed as directed by the act of Congress above referred to, it appearing to the court from the assent hereto of counsel for the parties in interest, that the service, notice and publication required by the rules of court are obviated by the voluntary entry in these proceedings of the appearance of the said parties.

THOS. H. ANDERSON, *Justice.*

I consent to the foregoing order.

WM. G. JOHNSON,
Solicitor for Trustees & Cestuis Que Trusts Named in Petition.

10 *Answer of Francis Winslow et al.*

Filed September 13, 1904.

In the Supreme Court of the District of Columbia, Holding a District Court of the United States.

In re the Condemnation by THE BALTIMORE AND OHIO RAILROAD of Part of the Tract of Land in the District of Columbia Known as "Youngsborough." No. 626, D. C.

The answer of Francis Winslow, Augustus Jay, and the American Security and Trust Company, trustees, and Kate la Montagne, Harriet Winslow, and Elizabeth P. Patterson to the rule toshow cause herein issued on the instrument of appropriation filed herein by the Baltimore and Ohio railroad.

These respondents admit that the legal title to the real estate in said instrument of appropriation described is vested in Francis Winslow, Augustus Jay and the American Security and Trust Company as trustees, and that the respondents Kate La Montagne, Harriet Winslow and Elizabeth P. Patterson are the *cestui que trust* and beneficiaries of said trust.

Respondents further show that the said parcel of land in the said instrument of appropriation described is an undivided and nonsegregated portion of an entire tract of land vested in the said trustees for the benefit of the said *cestui que trust,* which said tract abuts upon the Brentwood road from Florida avenue in the city of Washington to a point co-incident with the continuation of the north line

of New York avenue extended where said line intersects the
11 said Brentwood road as shown on the plat hereto attached marked "Exhibit A." That the said land is bounded on the north by a tract of land conveyed to the Real Estate and Improvement Company of Baltimore City by the said respondent trustees by deed recorded July 28, 1900 in Liber 2522 at folio 37 of the land records for the District of Columbia, on the east by the lands of the Columbian Institution for the Deaf and Dumb, on the west by the Brentwood road and on the south by Florida avenue, all which appears by said Exhibit A.

Respondents further show that the said The Real Estate and Improvement Company of Baltimore City is a body corporate, affiliated with the Baltimore and Ohio Railroad Company and that the said land on the north of respondents' property was acquired by said improvement company for the use and benefit of the said Baltimore and Ohio Railroad Company, and is actually used and occupied by the said Baltimore and Ohio Railroad Company and was acquired by said improvement company for said railroad company for the purposes of carrying out the scheme of its new terminals in the city of Washington.

Respondents further show that the entire Brentwood road from Florida avenue on the south to the said intersection with the northerly line of New York avenue extended is also the property of these respondents, the title thereto being vested in the said trustees on the same trust and by virtue of the same conveyances by which the entire land hereinbefore referred to is held by said trustees.

Further answering said rule these respondents say that they are advised and believe and therefore aver that the said Baltimore and Ohio Railroad Company is not authorized by the acts of Con-
12 gress in the said instrument of appropriation referred to nor by any other legislation to acquire by condemnation the land in the said instrument of appropriation referred to, and they deny the right of the said Baltimore and Ohio railroad to acquire the same by condemnation, and deny the power and jurisdiction of this court to adjudicate any condemnation thereof.

Further answering these respondents say that by the acts of Congress of February 12, 1901, and February 28, 1903, the Congress of the United States provided a general scheme and system of steam railroad terminals within the city of Washington and prescribed the rights of the said railroad company, the location of its tracks, the lands which it should acquire and the streets and avenues which should be closed as abandoned in order to the effectuation of the plan by Congress adopted. That by section three of the act of February 12, 1901 (31 Stats. at Large, page 775) it was enacted that the Brentwood road from Florida avenue to S street should be forever closed and abandoned as a public highway, and by section five of the act of February 28th, 1903 (32 Stats. at Large, page 912) it was provided that the said Brentwood road from the south side of S street to the line of Seventh street east should also be forever closed

and abandoned as a public highway. That by the act of February 12th, 1901 and the act of February 28th, 1903, it was provided that the said Brentwood road should not be closed or abandoned until all the land abutting on both sides thereof should have been acquired by the said railroad company or its associates in the enterprise of constructing said terminals. That these respondents are advised and therefore charge that the said railroad or its
13 associates in said enterprise have acquired all the land abutting on both sides of said Brentwood road from the line of Seventh street to the intersection of the north line of New York avenue extended and all the land abutting on the westerly side of said road from Florida avenue to the said northerly line of New York avenue extended but neither the Baltimore and Ohio railroad nor any of its associates in the enterprise of building said terminals has acquired the tract of land abutting on the easterly side of said Brentwood road between Florida avenue and the northerly line of New York avenue extended.

Further answering these respondents say that they are advised and believe and therefore charge that the said railroad company is not authorized under the law to acquire any lesser portion of the land of these respondents abutting on the Brentwood road than the whole of said land as prescribed in the said acts of Congress, and that the attempt of the said railroad company by its instrument of appropriation herein to select for condemnation an arbitrary part of said tract is unauthorized, null and void.

Further answering these respondents say that the declared purpose of said railroad company in said instrument of appropriation to use a portion of the land so arbitrarily selected by it for the purpose of deflecting and continuing Brent- road from its present location through the said parcel of land attempted to be condemned is *ultra vires* and void. That the said railroad company is not authorized by any law to lay out or create public highways within the District of Columbia other than its own public right of way, and that it is not empowered to repeal the acts of Congress declar-
14 ing the said Brentwood road to be closed and forever abandoned as a public highway, and to relocate and re-establish said Brentwood road as a public highway in defiance of the acts of Congress referred to.

Further answering these respondents say that they are advised and believe and therefore charge that no person or corporation is competent to lay out a public highway or street within the District of Columbia through lands owned by any such person or corporation except with the approval of the Commissioners of the District of Columbia in conformity with the provisions of the acts of Congress in that behalf. That by the legislation of Congress providing for a permanent system of highways within the District of Columbia no public street, road or highway can be laid out through the land of these respondents except in conformity with existing streets in the city of Washington and that the proposed deflection of the Brent-